IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL Nos 1607/84, 1608/84, 1609/84, 1610/84,
1611/84, 1612/84 and 1613/84

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA
and
Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJ STATE ROAD TRANSPORT CORPN

Versus

MITHIBEN KESHA

Appearance:

1. First Appeal No. 1607 of 1984

MS MAYA DESAI for MR MD PANDYA for Petitioner No. 1

MR SITAL PATEL for MR AJ PATEL for Respondent No. 1

RULE SERVED for Respondent No. 2-10

CORAM : MR.JUSTICE B.J.SHETHNA
and
MR.JUSTICE KUNDAN SINGH

Date of decision: 27/11/2002

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE B.J.SHETHNA)

#. All these appeals are disposed of by this common judgment and order as they are arising out of the impugned common judgment and award dated 25.11.1983 passed by the learned Motor Accident Claims Tribunal (Main), Rajkot, Dist. Rajkot disposing of M.A.C. Case Nos.422/81, 521/81, 15/82, 19/82, 46/82, 47/82 and 104/82.

#. First Appeal No.1608/84 is arising out of the award passed by the learned Tribunal in M.A.C. Case No.422/81 wherein the claim of the respondent-claimant was Rs.17,500/=, out of which the learned Tribunal awarded only Rs.7,000/= to the claimant. The appellant-Corporation has restricted its claim in this appeal to Rs.2,800/= only. Looking to the smallness of amount involved in the matter even otherwise we would not have entertained the appeal even if there was some substance or merit in it. Accordingly, this appeal was required to be dismissed on this ground alone without going into the merits of the case.

#. First Appeal No.1612/84 is arising out of M.A.C. Case No.46/82 wherein the claimant has claimed Rs.26,000/=, out of which learned Tribunal awarded only Rs.19,000/=. The appellant-Corporation has restricted its claim in this appeal to Rs.7,600/=. Looking to the smallness of the amount in this appeal, we would not like to interfere with the impugned award passed by the learned Tribunal and accordingly the same is required to be dismissed without going into the merits of the case.

#. First Appeal No.1609/84 is arising out of M.A.C. Case No.521/81 wherein respondent-claimant claimed Rs.95,000/=, but he was awarded only Rs.54,690/=. The appellant-Corporation has restricted its claim in this appeal to Rs.21,856/=.

#. First Appeal No.1610/84 is arising out of M.A.C. Case No.15/82 wherein the respondent-claimant claimed Rs.87,000/=. However, the learned Tribunal awarded only Rs.70,600/=. The appellant-Corporation has restricted its claim to Rs.28,240/= in this appeal.

#. First Appeal No.1611/84 is arising out of M.A.C. Case No.19/82 wherein the respondent-claimant has claimed Rs.84,000/=, out of which Rs.46,000/= was awarded by the learned tribunal. The appellant-Corporation has however restricted its claim to Rs.18,400/=.

#. First Appeal No.1613/84 is arising out of M.A.C. Case No.47/82 wherein the respondent-claimant claimed Rs.70,000/=. Out of which Rs.53,200/- was awarded by the learned Tribunal and the appellant-Corporation has restricted its claim to Rs.21,280/= in this appeal.

#. First Appeal No.1607/84 is arising out of M.A.C. Case No.104/82 wherein the respondents-claimants are legal heirs and representations of deceased-Kesha Talshi, who died at the age of 31 years only. Respondent No.1 is widow and respondent Nos.2 to 7 are minor children of deceased-Kesha Talshi. They had claimed Rs.1,50,000/= before learned Tribunal. Out of which learned Tribunal awarded only Rs.65,500/=. The appellant-Corporation has however restricted its claim in this appeal to Rs.32,750/=.

#. The accident in question took place on 17.6.1981 at mid night hours. The respondents-claimants and deceased-Kesha Talshi were travelling in bullock cart, which was driven by deceased-Kesha Talshi at a very moderate speed. At that time driver of S.T. bus No.GRT 8090 came from behind and dashed with the bullock cart wherein deceased-Kesha Talshi died and other six persons received injuries, therefore, widow of deceased-Kesha Talshi and his minor children as well as other injured persons who received injuries in the accident filed claim cases before learned Tribunal claiming different amounts of compensation as stated earlier. Considering the evidence on record, learned Tribunal came to the conclusion that it was due to rash and negligent driving of driver of bus No.GRT 8090 the accident took place, therefore, the bus driver was held to be solely negligent and accordingly claim petitions were partly allowed which have been challenged in this appeals by the appellant-Corporation.

##. Learned counsel Ms.Desai for Mr.Pandya for appellant-Corporation initially tried to submit that there was contributory negligence on the part of the driver of bullock cart because there was no reflector attached to the bullock cart and because of the darkness on the road the bus driver dashed with the bullock cart. She, therefore, submitted that the learned Tribunal ought to have awarded contributory negligence to the driver of the bullock cart also. However, going through the evidence of Hamir Amba Vadhia at Ex.8 it is clear that there was a reflector on both sides of the bullock cart in front as well as rear sides. In that view of the matter, learned Tribunal held that whether there was a lamp on the bullock cart or not at the time of accident would not be of any help to the Corporation in pleading that driver of bullock cart also contributed to the accident. In fact, a suggestion was put

to the witness Hamir Amba Vadhia Ex.8 that from the opposite direction truck was coming with full light and because of that bullocks were scared and driver of bullock cart was not able to control them, therefore, accident took place. It means that bullock cart was absolutely visible in the full light of the bus, which was coming opposite the direction. In that view of the matter, we are of the considered opinion that the learned Tribunal has rightly come to the conclusion that the accident took place because of sole negligence of the driver of S.T. bus.

##. In M.A.C. Case No.521/81, respondent-claimant Jadav Dana claimed Rs.95,000/=. He was only 21 years old. He was a labourer. He suffered 35% partial disability. He had to take treatment for several months, therefore, the learned Tribunal awarded Rs.20,000/= to him for pain, shock and suffering, Rs.2,000/= was awarded towards medical treatment and special diet. For six month he was not able to work, therefore, considering his monthly income @Rs.400/= p.m he was awarded Rs.2,400/= p.a. The learned Tribunal considering the partial disability of the respondent-claimant fixed monthly loss of Rs.140/= and applying multiplier of 18, learned Tribunal awarded Rs.30,240/=. Thus, learned Tribunal awarded in all Rs.54,640/=, which in our considered opinion cannot be said to be more. In fact, Ms.Desai was not in a position to submit that the learned Tribunal awarded the said amount in any way on higher side.

##. In M.A.C. Case No.15/82, respondent-claimant-Devshi Shardul claimed Rs.87,000/=. Considering the partial disability of 55%, learned Tribunal awarded Rs.22,000/= towards pain, shock and suffering, Rs.3,000/= towards medical treatment and special diet, Rs.2,400/= towards actual loss of income for six months @Rs.400/= p.m. Considering loss of earning @Rs.240/= p.m., applying multiplier of 15, the learned Tribunal awarded Rs.48,200/= and the total comes to Rs.70,600/-. This amount also cannot be said to be awarded on a higher side. In fact, Ms.Desai was not in a position to convince us that the learned Tribunal awarded on higher side under any head, therefore, we would not like to interfere with the same.

##. In M.A.C. Case No.19/82 the respondent-claimant Hamir Amba claimed Rs.84,000/=. The learned Tribunal assessed partial disability @25% and awarded Rs.20,000/= towards pain, shock and suffering to the claimant, Rs.2,000/= for medical treatment and special diet, Rs.2,400/= actual loss of earning for six months @Rs.400/= p.m. Considering economic loss @120/= p.m., applying multiplier of 15, the learned Tribunal awarded Rs.21,600/=. Thus, in all

Rs.46,000/= was awarded by the learned Tribunal. considering the fact that the respondent-claimant was 24 years old and that he had to remain in hospital for considerable time, Ms.Desai was not able to challenge the amount awarded by the Tribunal under any of the heads.

##. In M.A.C. Case No.47/82 respondent-claimant Soma Kanabhai claimed Rs.70,000/=. He was 25 years old. He had 35% partial disability. He was awarded Rs.20,000/= towards pain, shock and suffering, Rs.2,000/= towards medical expenses and special diet. He was awarded Rs.2,400/= towards actual loss of income for six months @Rs.400/= p.m. and future loss of income @160/= p.m. was assessed applying multiplier of 15. He was awarded Rs.28,800/=. Thus, in all he was awarded Rs.53,200/=. Considering the disability suffered by the respondent-claimant and the amount awarded under all the heads, Ms.Desai was not in a position to assail the finding recorded by the learned Tribunal in this case as well.

##. M.A.C. Case No.104/82 is filed by the legal heirs and representatives of deceased-Kesha Talshi. They are widow and six minor children of deceased-Kesha Talshi, who was driving the bullock cart. The learned Tribunal came to the conclusion that the monthly income of deceased-Kesha Talshi could be @Rs.400/= p.m. deducting Rs.75/=, out of which the learned Tribunal took the figure of Rs.325/= p.m. which comes to Rs.3,900/= p.a. However, learned Tribunal put round figure of Rs.4,000/= p.a. and applied multiplier of 15 in view of the age of deceased, who was 31 years old at the time of accident and awarded Rs.60,000/= as loss of income to the claimants. Rs.5,000/= was awarded as conventional compensation and Rs.500/= towards funeral charges. In all Rs.65,500/= was awarded by the Tribunal. Considering the facts and circumstances of the case, Ms.Desai was hardly in a position to assail the finding recorded by the learned Tribunal under any head of this case.

##. Only common submission made in all these appeals by Ms.Desai was that the learned Tribunal overlooked the fact that all the claimants including deceased Kesha Talshi were casual labourers, therefore, they would not have earned every day or every month. It is true that they were causal labourers, if that was the only ground then perhaps we might have thought it fit to interfere with the impugned judgment and award, but the learned Tribunal while awarding amount to the claimants and legal heirs and representatives of deceased-Kesha Talshi has not taken into consideration any future rise in income of the claimants and deceased-Kesha Talshi. Thus, in our considered opinion, it

would not be proper to interfere with the impugned judgment and award, looking to the amount awarded by the learned Tribunal in all these cases. If the amount is still lying in the fixed deposit, then the learned Tribunal may now pay the amount to the respective claimants by accountant payee cheque after due verification.

In view of the above discussion, all these appeals fail and are hereby dismissed with costs.

(B.J.Shethna, J.)

(Kundan Singh, J.)

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